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BOARD NOTICE

NOTICE 73 OF 1999

LONG-TERM INSURANCE ACT, 1998 (ACT NO 52 OF 1998)

POLICYHOLDER PROTECTION RULES (LONG-TERM INSURANCE)

The Registrar of Long-term Insurance hereby gives notice under section 62(3) of the Long-term Insurance Act, 1998 (Act No 52 of 1998), that it is intended to promulgate, under section 62 of the said Act, the Policyholder Protection Rules (Long-term Insurance) which are set out in the Schedule hereto, as proposed by the Registrar after consultation with the Advisory Committee on Long-term Insurance established by section 6 of the said Act.

All interested persons are hereby invited to make representations in the format/matrix set out below, on the proposed Rules so as to reach the Registrar within 60 days after the date of publication of this Notice, at the following address:

Attention Mr M Botha
Financial Services Board
P.O. Box 35655
MENLO PARK
0102

The Rules are available on the Financial Services Board's web site at <http://www.fsb.co.za> and comments may be e-mailed to the following address: idak@fsb.co.za or telefaxed to (012) 347-8788. Enquiries can be directed to Mr M Botha at (012) 428-8123.

**R.G. COTTRELL,
REGISTRAR OF LONG-TERM INSURANCE**

**RESPONSE PAPER ON CONSULTATION ON THE POLICYHOLDER PROTECTION
RULES (LONG-TERM INSURANCE)**

PREPARED BY THE FINANCIAL SERVICES BOARD

Please complete Part A or Part B of this form and return it to the Financial Services Board.

A

Approve of the Rules	
No comment on the Rules	

B

If this part is completed, please provide your comments separately per paragraph of the Rules.

Agree, but require minor changes	Agree, but require substantive changes	Disagree

SCHEDULE

RULES ON THE PROTECTION OF POLICYHOLDERS (LONG-TERM INSURANCE)

Section 62, Long-term Insurance Act, 1998

Index	Rules
Part I Definitions and Purpose of the Rules	1 - 2
Part II Summary of Rules	3
Part III Details of Disclosures	4 - 7
Part IV Replacement Policies	8
Part V Cancellation of Policies and Cooling Off	9
Part VI Group schemes and Fund Policies	10 - 11
Part VII General	12 - 16
Part VIII Title	17

PART I

DEFINITIONS AND PURPOSE

Definitions

1. In these Rules, "the Act" means the Long-term Insurance Act, 1998 (Act No 52 of 1998), any word or expression to which a meaning has been assigned in the Act, including the regulations promulgated under section 72 of the Act, shall bear that meaning and, unless the context otherwise indicates -
 - (i) "cancellation", in respect of a policy, or any part thereof means a unilateral act of discontinuance of the policy, or of any part thereof;
 - (ii) "compliance officer", in relation to these rules is the public officer of the insurer or a person appointed as a compliance officer by the public officer;

- (iii) "direct offering", in relation to these Rules means, negotiations on or marketing for the entering into or variation of a policy, by or through the mail, telephone, telefax, or any electronic means;
- (iv) "effective date", in relation to an insurance transaction means the date on which the entering into, variation or termination is accepted;
- (v) "ensure", in relation to a person or body and any matter mentioned in a provision of these Rules, means to take, any necessary steps in order that the clear objective of the provision is achieved;
- (vi) "execution-only policyholder", in relation to an insurance transaction means a policyholder who has neither before nor during any such transaction sought from any insurer or intermediary, nor has so been given, any advice by any such party in relation to such transaction;
- (vii) "fund policy" means a contract in terms of which a person, in return for a premium, undertakes to provide policy benefits for the purpose of funding in whole or in part the liability of a fund to provide benefits to its members in terms of its rules, other than such a contract relating exclusively to a particular member of the fund or to the surviving spouse, children, dependants or nominees of a particular member of the fund; and includes a reinsurance policy in respect of such a contract;
- (viii) "group scheme" means a scheme or arrangement which provides for the entering into of one or more policies other than an individual policy in terms of which two or more persons without an insurable interest in each other, for the purposes of the scheme, are the lives insured but excluding fund policies;
- (ix) "inspection" means any inspection contemplated in the Inspection of Financial Institutions Act, 1998 (Act No 80 of 1998);

- (x) "insurance transaction" means the entering into or termination of a policy and includes any material and significant variation of a policy excluding any contractually pre-determined or determinable variation;
- (xi) "insurer" means a long-term insurer;
- (xii) "intermediary" means any representative or independent intermediary acting as a sales person for an insurer;
- (xiii) "limited-transaction policyholder", in relation to an insurance transaction means a policyholder who before or during any such transaction receives or agrees to receive from any insurer or intermediary, only limited, or product related advice or information in relation to such transaction;
- (xiv) "policy" means a long-term policy but not a reinsurance policy;
- (xv) "policyholder" includes any prospective policyholder including a limited transaction policyholder but not an execution only policyholder;
- (xvi) "replacement policy" means a policy entered into by a policyholder (other than an execution-only policyholder), within a period of four months, in replacement wholly or partially of, or before or after the termination by the policyholder of any similar or associated policy;

PURPOSE OF THE RULES

2. The purposes of these Rules are to enable a policyholder to make informed decisions in regard to long-term insurance products where a policy is to be entered into, varied, cancelled, replaced or terminated and to ensure that intermediaries and insurers conduct business honestly and fairly, and with appropriate care and diligence, in the best interests of policyholders and the long-term insurance industry.

PART II

SUMMARY OF THE RULES

- 3.1. A policyholder who deals directly with an insurer without using an intermediary or otherwise asking for advice does so at his own risk and has only limited protection in terms of these Rules, unless such policyholder, known as an execution only policyholder, requests that all rights be maintained. The insurer is obliged to explain to the policyholder what his rights are.
- 3.2. All intermediaries shall disclose this Summary of the Rules to a policyholder at the earliest reasonable opportunity before entering into any initial or additional insurance transaction with that policyholder. The obligation to disclose this Summary does not apply to direct offerings by an insurer and may also be specifically waived by a policyholder.
- 3.3. All intermediaries shall ensure that they disclose at the earliest reasonable opportunity to a policyholder that they deal with, full details of their identity, their qualifications and experience, which insurance products they may sell and which companies they represent and in what legal capacity they operate.
- 3.4. All policyholders entering into an insurance transaction are entitled to be provided with adequate information about the impact of any decision that they are being asked or elect to make. This includes cost, affordability, impact on their insurance and investment portfolios, flexibility and contract terms. A policyholder may specifically waive this right, or know or agree that only limited information is to be provided, in which case the policyholder will be known as a limited transaction policyholder.
- 3.5. No policyholder may be advised to cancel an existing policy or any part thereof to purchase an alternative replacement policy before full disclosure has been made as to the implications of such a cancellation and replacement.
- 3.6. An insurer shall ensure that it communicates at least once with a policyholder or a execution only policyholder to provide details of:- its identity; the product being

purchased or transaction being undertaken, including, the relevant costs associated with the transaction; the contractual terms and the institutional details for transactions and complaints. The insurer shall ensure that a separate summary of the material terms of the policy is made available to the policyholder.

- 3.7 An insurer shall ensure that policyholders who enter into an insurance transaction must be given 30 consecutive days by the insurer, from the effective date of the transaction, within which to ask for the transaction to be automatically cancelled and the premiums refunded. The insurer shall ensure that it complies with the request and will only be allowed to deduct from the policy the costs of any risk cover actually enjoyed and any market loss where the market value of the investments made has fallen in the intervening period due to market conditions. This right may not be exercised if the policyholder has already claimed or intends to claim against the policy once the cancellation has taken place. This right may be specifically waived by the policyholder or contracted out of effect by the insurer where the product type being marketed requires it or the law does not allow for cancellation.
- 3.8 An insurer shall ensure that it accredits intermediaries on the products that those intermediaries may sell or service for that insurer, based on appropriate information and training.
- 3.9 Any policyholder that has a complaint about the conduct of an intermediary or insurer in complying with these rules or otherwise must address that complaint to the compliance officer at the insurer or to the long-term insurance ombudsman if applicable or if still unsatisfied to the Registrar at the Financial Services Board.
- 3.10 Any insurer or intermediary that fails to comply with these Rules may be guilty of an offence and liable for prosecution

PART III
DETAILS OF DISCLOSURES

4. Principles of disclosures

4.1 The following shall apply to disclosures contemplated in these Rules:

- (a) The intermediary or insurer as applicable shall bear the onus of proving that a disclosure has been made.
- (b) Disclosures must be in plain language and set out so as to promote easy comprehension and to avoid uncertainty or confusion.
- (c) Disclosures shall be made at an appropriate time and need only be made in respect of significant or material transactions and may be made in writing, orally, using any appropriate electronic media or by telefax.
- (d) An insurer or intermediary as appropriate shall ensure that they confirm any disclosures to the policyholder in writing where requested or agreed to by the policyholder.
- (e) Disclosures need not be duplicated or repeated to the same policyholder unless material or significant changes which will affect that policyholder have occurred or the transactions contemplated make it desirable or necessary.
- (f) Disclosures may be validly made using standard forms or format.

5. Obligatory disclosures

5.1 An intermediary before dealing with a policyholder in respect of an insurance transaction shall ensure that at least the following disclosures, where applicable, are made once to the policyholder, in writing:

- (a) full names, titles or designations, postal and physical addresses of the intermediary's head office and issuing office, telephonic and electronic numbers, communication details of contact persons;

- (b) the status and relationship with the insurer involved and proof of authority or mandate to act, including whether more than 10% shares are held directly or indirectly in the insurer, whether they are affiliated companies and whether more than 30% of business is placed with any particular insurer in any one year;
- (c) concise details of relevant experience;
- (d) insurer and product accreditation details;
- (e) details of any indemnity cover; and
- (f) any fee the policyholder pays to the intermediary.

5.2 An insurer shall ensure that it makes at least the following disclosures to the policyholder in writing, as soon as is practical after an insurance transaction is initiated –

- (a) full registered name and abbreviated name, postal and physical addresses of the head office and issuing office, telephonic or electronic access numbers, and communication details of service departments;
- (b) the compliance officer of the insurer and details of procedures for the resolution of complaints by policyholders, including complaints in respect of intermediaries;
- (c) claims notification procedures;
- (d) name, class or type of policy involved;
- (e) nature and extent of benefits which must include the bonus status of the policy, the manner of deriving or obtaining thereof and manner of payment or furnishing of benefits as the case may be;

- (f) nature and extent of monetary obligations assumed by the policyholder, manner of payment of premiums and the consequences of non-payment of such premiums;
- (g) mortality, morbidity or other loadings, guarantees, exclusions, waiting periods or other special terms or conditions;
- (h) where premiums are to be contractually increased, the amount of the increased premium shall be shown for the first five years and thereafter on a five-year basis;
- (i) minimum guaranteed values shall be shown where applicable. Where illustrative values are shown, such values shall show growth and surrender values in respect of the policy every year for the first five years and every fifth year thereafter for the term of the policy;
- (j) in the case of policies which are retirement annuities, fund values shall be shown in place of surrender values until the earliest retirement date;
- (k) all values shall be shown in monetary terms where possible;
- (l) any relevant assumptions on amounts and costs shall also be disclosed;
- (m) actual initial and ongoing expense charges, commissions and any other fees leviable against the policy, including the amount and incidence of these charges and fees.

5.3 As regards the policy involved, an insurer shall ensure that it makes at least the following disclosures to the policyholder, as soon as is practical after an insurance transaction is initiated—

- (a) mortality, morbidity or other loadings, guarantees, exclusions, waiting periods or other special terms or conditions;

- (b) in the case of policies which are retirement annuities, fund values shall be shown in place of surrender values until the earliest retirement date;
- (c) all values shall be shown in monetary terms where possible;
- (d) any relevant assumptions on amounts and costs shall also be disclosed;
- (e) actual initial and ongoing expense charges, commissions and any other fees leviable against the policy, including the amount and incidence of these charges and fees;
- (f) those of the representations made by or on behalf of the policyholder to the insurer which were regarded by that insurer as material to its assessment of the risks under the policy; and
- (g) the events in respect of which the policy benefits are to be provided and the circumstances (if any) in which those benefits are to be provided.

Other disclosures

- 6 The provisions of this Part shall not be construed as preventing any insurer or intermediary involved in any particular case to make any other or additional disclosures to a policyholder before the effective date, where such disclosures will promote the better achieving of the objects of these Rules and are deemed necessary or expedient in the circumstances of the particular case, or to comply with any other code of business conduct provisions applying lawfully to any such party.

Standardised disclosures

- 7 Without prejudice to the provisions of Rules 4 and 5, an insurer, or any of its intermediaries with the concurrence of the insurer, may draft standardised disclosure documentation in respect of any particular class or type of policy, to be used for the purpose of complying with the provisions of this Part: Provided that –

- (a) such documentation is current on any relevant effective date; and

- (b) such use does not exonerate any insurer or intermediary from compliance with any disclosure requirement of this Part not addressed, or not fully addressed, in such documentation.

PART IV

REPLACEMENT POLICIES

8 Prohibitions in respect of replacement policies

- 8.1 An intermediary shall ensure that no policyholder is advised or asked to cancel a policy in order to purchase a replacement policy, without first being fully advised as to the implications, cost and consequences of such an action.
- 8.2 Intermediaries shall ensure that any replacing transaction is identified as a replacement of a policy to the issuing insurer when applying to it on behalf of the policyholder.
- 8.3 Intermediaries shall ensure that the previous insurer is notified that its cancelled policy is part of a replacing transaction to allow that insurer, if it so wishes, to contact the policyholder.
- 8.4 Any person who believes that any new policy qualifies as a replacement policy and that the policyholder has not been appropriately advised or that the insurers involved have not been notified may lodge a written complaint to the insurer which issued the new policy or to the Registrar who shall refer the complaint to such insurer.
- 8.5 The insurer shall within six weeks after the receipt of the complaint take steps to establish the facts and if satisfied that the policy qualifies as a replacement policy and that the policyholder was not given appropriate or correct advice, or that the insurers involved were not properly notified, take disciplinary steps against the intermediary involved, including reclaiming any commission paid, whether or not the policy survives, or terminating the mandate of that intermediary, to prevent a

reoccurrence of this type of transaction, after first giving that intermediary the opportunity to respond to the allegations.

- 8.6 The insurers shall offer the policyholder the right of cancellation in accordance with these Rules from the date that all internal procedures are final.
- 8.7 The insurer shall report the findings and actions in writing to the complainant and to the Registrar, who may then elect to take any further action in terms of the law.

PART V

CANCELLATIONS OF POLICIES AND COOLING OFF

9 Cancellations of policies and cooling off

- 9.1 (a) A policyholder may in any case where no claim has been instituted or any benefit received under the policy concerned or where no right has yet arisen to institute any claim or receive any benefit; and
- (b) within a period of 30 days of receipt of the summary contemplated in section 48 of the Act, or the date that an insurer has completed the investigation referred to in Rule 8(6),

cancel any policy, or any such variation, excluding any policy or variation thereof which only lasts for 30 days or less, by written cancellation notice sent to the insurer. All premiums or moneys paid by the policyholder to the insurer up to the date of receipt of the cancellation notice or received at any date thereafter in respect of the cancelled policy, shall be refunded to the policyholder, subject to the deduction of the cost of any risk cover actually enjoyed and any market loss where the market value of the investments made has fallen in the intervening period due to prevailing market conditions.

- 9.2 An insurer shall ensure that it complies with the request for cancellation received after the 30 day notice period but not later than 60 days after the effective date where the policyholder can prove that a cancellation notice was completed in

- (b) shall make copies of these Rules and of any guidelines available at the Registrar's office or otherwise at the request of any person at a prescribed fee per copy;
- (c) may from time to time, with the concurrence of the Advisory Committee, issue non-binding -
 - (i) guidelines on the interpretation and implementation of these Rules; and
 - (ii) best conduct directives for intermediaries;
- (d) shall -
 - (i) annually compile a compliance review summarising the import of reports referred to in Rule 16.7 and containing advice deemed necessary or expedient in connection with the achieving of the objects of these Rules, including recommendations on the amendment of these Rules or of the Act, including advice not specifically connected to such reports; and
 - (ii) submit such compliance review to the Advisory Committee for consideration.

13 Consequences of non-compliance

13.1 Where a policyholder considers that a provision of these Rules has been contravened or not complied with by any party involved in a policy held by him or her, such policyholder may lodge a written complaint to the party involved and, such complaint is not resolved to the satisfaction of the policyholder, to the Registrar: Provided that the foregoing provisions of this sub-rule shall with the necessary changes also apply to any insurer, independent intermediary, representative or any other interested member of the public who or which considers that any provision of these Rules has in connection with any policy and in any particular case been contravened or not complied with.

- 13.2 The Registrar shall, on receipt of any such complaint, require the party involved by written notice to provide the Registrar within a period determined by the Registrar with a full reply to the complaint.
- 13.3 The Registrar may, whether an inspection has been carried out or not, and where a breach of these Rules has been established to the Registrar's satisfaction, after informing the party or parties involved of the intention so to act and affording them a reasonable opportunity to respond thereto, by written notice require any party involved to take particular corrective steps in accordance with a specific timetable, and the Registrar may take any steps in connection with the breach which is available to the Registrar in law.
- 13.4 A party involved to which a notice contemplated in rule 13.2 and 13.3 has been directed, shall within the period determined by the Registrar in the notice, or within any extended period determined by the Registrar on written application by the party, comply with the requirements stated in the relevant notice.

Waiver of rights

- 14 No waiver by any policyholder of any right or benefit granted by these Rules, shall be valid unless agreed to specifically.

Penalties

- 15 An insurer or intermediary who contravenes or fails to comply with these Rules shall be guilty of an offence and on conviction liable to a penalty or fine referred to in section 66(1)(c) or 67(1)(c), as the case may be, of the Act.

16 Additional duties of insurers and intermediaries

- 16.1 (a) Subject to paragraph (b), an insurer must, where an agreement is to be entered into with an intermediary for the rendering of services as intermediary, furnish the intermediary with a written mandate or authority to act on behalf of the insurer excluding the collection of premiums, setting out the terms and conditions of such mandate or authority.

- (b) An insurer must in the case of an agreement contemplated in paragraph (a) existing immediately prior to the date referred to in section 62(5) of the Act, and which does not contain any written mandate or authority contemplated in paragraph (a), within 30 days after the said future date furnish such intermediary with such written mandate or authority.
- 16.2 (a) Insurers shall ensure that records are kept of all disclosures made or advice given by them, including the manner of disclosure or advice giving, in respect of any insurance transaction. These records must be kept until maturity of the policy from the effective date of the transaction.
- (b) Copies of such disclosure documents are to be provided to the policyholder.
- 16.3 An insurer shall ensure that a summary of every policy issued by it, or any variation thereof, is reducible to a written or printed form (with the inclusion of any arrangement for interim cover), and issued to the policyholder within 60 days as contemplated in section 48 of the Act.
- 16.4 Insurers shall ensure that any policies or variations thereof which may be issued to policyholders, are issued in a clear and readable print size, spacing and format.
- 16.5 An insurer shall ensure that where any decision has been made as to the repudiation of any claim under a policy, or as regards the quantum which is in dispute, the policyholder concerned is in writing informed of the reasons for the decision and that the policyholder may within a period of not less than 90 days after the date of the relevant decision make representations to the relevant insurer in respect of such decision.
- 16.6 (a) Insurers and intermediaries shall, within 6 months from the date of coming into operation of these Rules, ensure that they provide -
 - (i) for monitoring systems to measure compliance with these Rules;

- (ii) where necessary, for information or training courses for persons employed or contracted in such business, in respect of the implementation by them of these Rules;
- (iii) for the accreditation of the relevant knowledge, competency and proficiency of such persons in the products that they represent within 6 months of such persons becoming active.
- (iv) for the ongoing recordal of the knowledge, competency and proficiency of accredited persons.

16.7 Every insurer shall, within a period of four months after the end of every financial year, submit a written report to the Registrar, in respect of the period of every such financial year, on –

- (a) all steps taken by the insurer to ensure compliance with the provisions of these Rules, and the reasons for any non-compliance which may have occurred;
- (b) problems experienced by the insurer and any of its representatives with the interpretation or implementation of these Rules, and suggestions or recommendations for improvements or other amendments; and
- (c) full details of any complaints received by the insurer in connection with the implementation of these Rules, and of all steps taken in connection therewith.

PART VIII

TITLE

Title

- 17 These Rules shall be called the Policyholder Protection Rules (Long-term Insurance).
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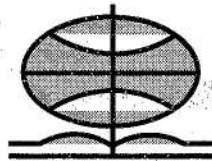
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CONTENTS**No.****Page
No. Gazette
No.****BOARD NOTICE**

- | | | | |
|-----------|--|----------|--------------|
| 73 | Long-term Insurance Act (52/1998): Policy holder Protection Rules (Long-term Insurance) | 1 | 20278 |
|-----------|--|----------|--------------|
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